

VIRGINIA: IN THE CIRCUIT COURT FOR CITY OF CHESAPEAKE

Danny R. Sawyer

Plaintiff,

v.

CASE NO: CL12002177-00

Kline Chevrolet Sales Corporation t/a Priority Chevrolet

**Serve: William R. Van Buren, III, Esquire
Registered Agent
Kaufman & Canoles, P.C.
One Commercial Place, Suite 2000
Norfolk, Virginia 23510**

AND

Priority Auto Group, Inc. d/b/a Priority Chevrolet

**Serve: Dennis Ellmer
Registered Agent
1495 S. Military Highway
Chesapeake, VA 23320**

AND

Wib Davenport

**Serve: 1495 S Military Highway
Chesapeake, VA 23320**

AND

Melinda Lloyd

**Serve: 1495 S Military Highway
Chesapeake, VA 23320**

AND

Lawsuit # 1

*Filed Sept. 14, 2012
Amended Sept. 21, 2012*

Re: Purchase & Arrest

Bill Fink

**Serve: 1495 S Military Highway
Chesapeake, VA 23320 •**

AND

Adam Sgroi

**Serve: 1495 S Military Highway
Chesapeake, VA 23320 •**

AND

Brian Louis.

**Serve: 1495 S Military Highway
Chesapeake, VA 23320 •**

AND

Brad Anderson

**Serve: 1495 S Military Highway
Chesapeake, VA 23320 •**

Defendants.

AMENDED COMPLAINT

COMES NOW the Plaintiff, Danny R. Sawyer (hereafter the "Plaintiff"), by counsel, and as and for his Complaint against the Defendants, he alleges as follows:

PARTIES

1. The Plaintiff is an adult resident of Chesapeake, Virginia.
2. The Defendant, Kline Chevrolet, Inc., t/a Priority Chevrolet (hereinafter "Priority Chevrolet" and/or "the dealership"), is a Virginia corporation with its principal place of business in Chesapeake, Virginia.

3. The Defendant, Priority Auto Group, Inc., d/b/a Priority Chevrolet (hereinafter "Priority Chevrolet" and/or "the dealership"), is a Virginia corporation with its principal place of business in Chesapeake, Virginia.

4. The Defendant, Wib Davenport, is an adult resident of the Commonwealth of Virginia and at all relevant times was an employee and agent of Priority Chevrolet and acting on behalf of Priority Chevrolet as described below.

5. The Defendant, Melinda Lloyd, is an adult resident of the Commonwealth of Virginia and at all relevant times was an employee and agent of Priority Chevrolet and acting on behalf of Priority Chevrolet as described below.

6. The Defendant, Bill Fink, is an adult resident of the Commonwealth of Virginia and at all relevant times was an employee and agent of Priority Chevrolet and acting on behalf of Priority Chevrolet as described below.

7. The Defendant, Adam Sgroi, is an adult resident of the Commonwealth of Virginia and at all relevant times was an employee and agent of Priority Chevrolet and acting on behalf of Priority Chevrolet as described below.

8. The Defendant, Brian Louis, is an adult resident of the Commonwealth of Virginia and at all relevant times was an employee and agent of Priority Chevrolet and acting on behalf of Priority Chevrolet as described below.

9. The Defendant, Brad Anderson, is an adult resident of the Commonwealth of Virginia and at all relevant times was an employee and agent of Priority Chevrolet and acting on behalf of Priority Chevrolet as described below.

FACTS

10. On or about May 7, 2012, the Plaintiff presented to Priority Chevrolet around 10:30 a.m. to purchase a new car.

11. The Plaintiff negotiated the price with Brian Louis of a black Chevrolet Traverse VIN:1GNKRGED0CJ269950 (hereinafter "the Black Traverse") that he purchased.

12. The Plaintiff purchased the Black Traverse and left the dealership in the Black Traverse around 8:00 p.m.

13. At the time of purchase of the Black Traverse, the Plaintiff traded in a 2008 Saturn Vue, VIN:3GSC153718S681028 (hereinafter "the Saturn Vue").

14. In the purchase of the Black Traverse, the Plaintiff also signed a promissory note for \$16,946.74 as the amount due on the Black Traverse in order to take the Black Traverse home that day.

15. The Plaintiff's salesman on the sale of the Black Traverse was Brian Louis.

16. The sales manager on the sale of the Black Traverse was Wib Davenport.

17. The finance manager on the sale of the Black Traverse was Melinda Lloyd.

18. On or about May 7, 2012, the Plaintiff had also test driven a 2012 Silver Metallic Ice Blue Traverse VIN:1GNKRJED9CJ139128 (hereinafter "the Blue Traverse").

19. On May 8, 2012, the Plaintiff returned to the Dealership at approximately 10:30 a.m. with a request to exchange the Black Traverse for the Blue Traverse which he had test driven on May 7, 2012.

20. Wib Davenport agreed to the exchange of the vehicles and to cancel the deal on the Black Traverse and to make a new deal on the Blue Traverse with the Plaintiff.

21. Wib Davenport further asked the Plaintiff if he could return around 1:00 p.m. for Brian Louis to assist with the new deal and the exchange of the vehicles because Brian Louis would be out of the office until 1:00 p.m.

22. On May 8, 2012, at approximately 2:30 p.m. the Plaintiff returned to the dealership where the receptionist had Brian Louis paged to the new car showroom.

23. Brian Louis appeared approximately 10 minutes later stating that the dealership had all of the Plaintiff's paperwork ready for the new purchase of the Blue Traverse and that they were just waiting on the credits of the Plaintiff's GM Card rebates to be transferred from the purchase of the Black Traverse to the new purchase of the Blue Traverse.

24. The dealership did not negotiate any further with the Plaintiff on the price of the

Blue Traverse and drafted the documents for the purchase of the Blue Traverse without any further discussion with the Plaintiff.

25. Approximately 20 minutes later, Brian Louis returned and told the Plaintiff that he had another customer on the lot but that "Melinda Lloyd has all the paperwork and as the previous day she will get you to sign all the paperwork in the finance manager's office."

26. At approximately 4:00 p.m., the Plaintiff walked into Melinda Lloyd's office, reviewed the sales contract for the purchase of the Blue Traverse, including the purchase price of \$33,957.55, agreed to the terms of the new contract, including the purchase price of \$33,957.55, and left to acquire insurance on the Blue Traverse as well as a cashier's check for the remaining balance on the contract of \$16,500.46.

27. Approximately 45 minutes later, the Plaintiff returned to the dealership with a cashier's check for \$16,500.46 in hand and presented it to Melinda Lloyd who accepted it.

28. Melinda Lloyd proceeded to escort the Plaintiff to the new showroom receptionist where he was presented with a receipt for the cashier's check in payment of the balance remaining on the purchase of the Blue Traverse.

29. The first initial receipt which the receptionist provided to the Plaintiff had not been entered correctly and stated that only \$1,600.46 had been received. The Plaintiff notified the receptionist of the mistake who then apologized and took back the initial receipt and then gave the Plaintiff an updated receipt for the correct amount of \$16,500.46.

30. Before leaving the showroom on May 8, 2012, the Plaintiff was approached by Wib Davenport, who thanked the Plaintiff for the purchase of the Blue Traverse.

31. The Saturn Vue was serviced by the dealership, certified as a certified used car and placed out for sale on the lot through advertisements.

32. Wib Davenport also asked the Plaintiff to please give them great customer satisfaction scores on the survey the Plaintiff would be receiving and if there was anything the Plaintiff wasn't satisfied with to bring it to his attention.

33. At approximately 5:00 p.m., the Plaintiff left the dealership in the newly purchased

Blue Traverse, which he then drove home.

34. On or about May 10, 2012, the dealership cashed the Plaintiff's cashier's check for \$16,500.46.

35. On May 9, 2012, the Plaintiff left the United States on a vacation cruise.

36. On May 15, 2012, when the Plaintiff returned home from vacation, there were numerous voicemail messages and an unstamped unaddressed envelope in his mailbox from Wib Davenport of Priority Chevrolet.

37. On May 17, 2012, the Plaintiff spoke to Mr. Wib Davenport about the numerous messages left on his phone, at work, and in his mailbox, starting on May 9, 2012, to inquire about the issue that was unaddressed in all the messages or the letter.

38. On May 17, 2012, Wib Davenport told the Plaintiff that Priority Chevrolet and its agents had made a mistake in the contract in that they had placed the wrong price in the sales contract of the Blue Traverse.

39. During the call of May 17, 2012, the Plaintiff stated that he had purchased the Blue Traverse and did not owe the dealership any more money.

40. During the call of May 17, 2012, Wib Davenport stated that he wanted the Plaintiff to come into the dealership to sign a new contract for the Blue Traverse to correct the dealership's mistake.

41. After this request, the Plaintiff again told Wib Davenport that he had purchased the Blue Traverse and he owed no further funds to the dealership.

42. From May 9, 2012 and in the weeks since, Priority Chevrolet and its agents, including but not limited to, Wib Davenport, Adam Sgroi, Bill Fink, and Brad Anderson, harassed the Plaintiff with numerous phone messages, text messages, missed calls, and two unaddressed, unstamped envelopes hand delivered to the Plaintiff's mailbox, and even tried to locate and harass the Plaintiff at his place of employment.

43. On June 10, 2012, an unidentified agent of the dealership who would not give his name arrived at the Plaintiff's residence and was received by the Plaintiff's roommate. During

the encounter, the dealership's agent stated that he wanted to speak with the Plaintiff. The Plaintiff was at work during the encounter.

44. On June 14, 2012, the Plaintiff was informed by his roommate that the Chesapeake Police had been at the Plaintiff's home at approximately 7:00 p.m., asking if the Plaintiff resided there and that they needed to speak with the Plaintiff. The Plaintiff was at work during the encounter.

45. On June 15, 2012, the Plaintiff was home when three police officers arrived, two in uniform and one in plain clothes, from the Chesapeake Police.

46. Two of the police officers stood on the front porch, while another police officer stood in the back yard of the Plaintiff's home.

47. When the Plaintiff came to the door, the police officers asked the Plaintiff to confirm who he was, which he did by verbal recognition and proper identification.

48. The police officers then proceeded to tell the Plaintiff that a warrant had been issued for his arrest for grand larceny and that the claimant was Priority Chevrolet.

49. When the Plaintiff inquired about the basis for the complaint, the police officers had no further complaint or information to give to the Plaintiff.

50. The police officers then escorted the Plaintiff from his house and told the Plaintiff that he could not be allowed to leave the officer's sight to put his shoes on and place his dogs in their kennel.

51. The Plaintiff was then arrested, handcuffed on his front porch, and perp walked by the police officers past three of his neighbors' homes where two marked police cars were parked at the end of his street.

52. The Blue Traverse of question was parked in the driveway of the Plaintiff's home at the time of the arrest and was in plain view of the arresting police officers.

53. The Blue Traverse was never seized or searched by the police.

54. The Blue Traverse remains at the Plaintiff's home today and the Plaintiff is the true and lawful owner of the Blue Traverse.

55. At the time of his arrest, the Plaintiff's neighbor was in his yard cutting his grass and saw the Plaintiff's arrest and perp walk.

56. The Plaintiff was taken to the Chesapeake City Jail where he was searched and had his personal property removed from his possession.

57. The Plaintiff was placed in front of the magistrate on duty and was given a recognizance bond for his release.

58. The Plaintiff was again searched, fingerprinted, had his picture taken in two poses for mug shots and had his personal information including medical, social, contacts and work history documented.

59. The Plaintiff remained in a holding area for approximately four hours waiting for his booking to be completed while he had to sit amongst other inmates who were accused of various other crimes.

60. The Plaintiff was then released into the night with his personal belongings and left to find his own way home.

61. Having been left stranded, the Plaintiff was forced to walk approximately five miles to his home arriving at 10:30 p.m.

62. On June 21, 2012, the Plaintiff appeared before a Chesapeake General District Criminal Court judge and was arraigned.

63. Even after his arrest, the Plaintiff continued to receive multiple calls, voice mails, and text messages from Priority Chevrolet threatening criminal charges.

64. Priority Chevrolet and its agents even used GPS technology to locate the Plaintiff's address and made several more personal appearances at his home.

65. Priority Chevrolet and its agents also used On Star technology to pinpoint the current location of the Blue Traverse and further harass the Plaintiff via multiple ways of communication.

66. On July 2, 2012, still trying to have the Plaintiff sign a new contract even after they had had him arrested, Priority Chevrolet and its agents again harassed the Plaintiff and told

him that if he did not come into the dealership that day they would have the police "finish the deal."

67. On August 23, 2012, the Plaintiff appeared at the Chesapeake General District Court, Criminal Division, for his preliminary hearing

68. Even at the preliminary hearing, the Defendants still harassed the Plaintiff by using the Commonwealth's Attorney to inform the Plaintiff that they would drop the charges if only the Plaintiff would talk to them and sign a new contract.

69. On August 23, 2012, the Commonwealth's Attorney nolle prossed the case and stated it was over and she would not bring it back.

70. Even as the Plaintiff left the court room after the charges were ended, Wib Davenport still tried to talk to him about signing a new contract.

71. The Plaintiff is a registered critical care nurse whose license was placed in jeopardy by the actions of the defendants.

COUNT ONE: MALICIOUS PROSECUTION

72. The Plaintiff reiterates and incorporates paragraphs 1 – 71 above as if fully set out herein.

73. On such occasions as the Defendants instituted and chose to maintain the criminal prosecution of the Plaintiff, they did so with malice.

74. The Defendants' actions with regard to the institution and maintenance of the criminal prosecution were committed wantonly and with reckless disregard for whether a reasonable ground of suspicion existed, supported by the circumstances, which would lead a reasonable man to believe that the Plaintiff had committed a crime.

75. The Defendants were at all times aware that the dealership and its agents had made a mistake on the contract price and used threats and coercion to try to have that mistake corrected

including swearing out a false complaint against the Plaintiff in an attempt to leverage criminal action to correct their error.

76. The Defendants nonetheless instituted a criminal case against the Plaintiff for an improper purpose – namely, to correct an error in the sales price made by the dealership itself.

77. Any arguments as to the contract would have been a purely civil matter. As the mistake by the dealership was unilateral the dealership used malice and criminal prosecution for no criminal act to try and scare the Plaintiff into fixing their mistake.

78. The Defendants continued the malicious prosecution of the Plaintiff after it had him arrested by threatening to let the police finish the deal.

79. Defendant's failure to provide the investigating officer, J.E. Jackson, with a copy of the buyers order, contract, purchase information, was done intentionally and maliciously to mislead the officer so that the warrant for Plaintiff's arrest would be issued and further constituted a falsification of the report to the Chesapeake Police Department.

80. No probable cause existed to support a conviction of the Plaintiff, and actual malice by the Defendants may additionally be inferred by the lack thereof.

81. The Plaintiff's criminal prosecution was terminated in his favor.

82. As a result of the malicious prosecution instituted and maintained by the Defendant, the Plaintiff has suffered substantial actual damages including, by example only and without limitation, the legal fees, court costs and other expenses of defending the criminal prosecution, as well as non-liquidated damages such as extreme emotional distress, aggravation, humiliation, loss of enjoyment of life, loss of reputation, sleeplessness, headaches, nightmares, fear of arrest and other incidental and consequential damages which were reasonably foreseeable by these Defendants. The Defendants are also liable to the Plaintiff for punitive damages with

regard to this claim.

COUNT TWO: SLANDER

83. The Plaintiff reiterates and incorporates paragraphs 1 – 82 above as if fully set out herein.

84. Plaintiff has resided in the City of Chesapeake, Virginia, for more than 35 years and has at all times enjoyed a reputation as an honest and upstanding citizen of the City of Chesapeake and the Commonwealth of Virginia and is a registered nurse who is licensed to practice in the Commonwealth of Virginia.

85. The Defendants' aforementioned remarks to the police officers, the Plaintiff's Roommate, the Commonwealth's Attorney, and the Plaintiff himself, clearly impugn the honesty and integrity of the Plaintiff and imply that he is no better than a common thief and ought to be prosecuted as such.

86. The Defendants' aforementioned remarks to the police officers, the Plaintiff's Roommate, the Commonwealth's Attorney, and the Plaintiff himself, are from their usual construction and common usage, construed as insults and tend to violence and breach of the peace. The Defendants knew said remarks were false, defamatory, slanderous and insulting and they made them with intent to injure the plaintiff's good reputation and to force him into entering into a new contract to correct their mistake.

87. As a proximate result of said false, malicious, insulting, defamatory and slanderous remarks, the Plaintiff has been caused to suffer humiliation, embarrassment, mortification, shame, vilification, ridicule, exposure to public infamy, disgrace, scandal, injury to his reputation and feelings, and financial loss, and has been hampered in the conduct of his business and affairs.

Much of this injury will endure permanently.

COUNT THREE: DEFAMATION

88. The Plaintiff reiterates and incorporates paragraphs 1 – 87 above as if fully set out herein.

89. On or about June 11, 2012, the Defendants, with knowledge of the Plaintiff's fine reputation as an upstanding member of the community and an ethical registered nurse licensed to practice in the Commonwealth, did, with actual malice, compose, and swear out a false criminal complaint against the Plaintiff for grand larceny to cover up a unilateral contract mistake made by the dealership.

90. As a proximate result of the aforementioned false, malicious, defamatory, slanderous, libelous and insulting statements, published with actual malice by the Defendants, the Plaintiff has been caused to suffer great mortification, humiliation, shame, vilification, exposure to public infamy, scandal and disgrace, injury to his good reputation, harm in the conduct of his business affairs, and financial loss, and has been and will forever be hampered in the practice of his profession, all in that the Plaintiff has been falsely imputed to have conducted himself in an unethical and unprofessional manner. Much of this injury will endure permanently.

COUNT FOUR: CIVIL CONSPIRACY

91. The Plaintiff reiterates and incorporates paragraphs 1 – 90 above as if fully set out herein.

92. On or about June 11, 2012, the Defendants mutually agreed, conspired and did, with actual malice, compose, and swear out a false criminal complaint against the Plaintiff for

grand larceny to cover up a unilateral contract mistake made by the dealership.

93. The Defendants knew that the purpose of their agreement and conspiracy was to use the false criminal complaint to apply pressure on the Plaintiff in order to force the Plaintiff to pay additional money for the Blue Traverse, which he had already purchased.

94. The Defendants knew or should have known that their agreement and conspiracy were unlawful, fraudulent, and deceitful and would result in injury to the Plaintiff.

95. The Defendants agreed and understood that each would act in concert with the others to achieve the above goal.

96. As a proximate result of the Defendants' civil conspiracy, the Plaintiff has suffered substantial actual damages including, by example only and without limitation, the legal fees, court costs and other expenses of defending the criminal prosecution, as well as other financial loss and non-liquidated damages such as extreme emotional distress, shame, vilification, aggravation, humiliation, loss of enjoyment of life, loss of reputation, sleeplessness, headaches, nightmares, fear of arrest, exposure to public infamy, scandal and disgrace, and other incidental and consequential damages which were reasonably foreseeable by these Defendants. Much of this injury will endure permanently.

97. Punitive damages are also warranted against the Defendants due to their willful, wanton, and malicious conduct in disregard of the Plaintiffs' rights.

COUNT FIVE: ABUSE OF PROCESS

98. The Plaintiff reiterates and incorporates paragraphs 1 – 97 above as if fully set out herein.

99. On or about June 11, 2012, the Defendants did, with actual malice, compose, and

swear out a false criminal complaint against the Plaintiff for grand larceny and otherwise instituted and continued the criminal case against the Plaintiff for grand larceny in order to cover up a unilateral contract mistake made by the dealership.

100. The Defendants had an ulterior motive and purpose for using the false criminal complaint and false criminal case against the Plaintiff, which was to apply pressure on the Plaintiff in order to force the Plaintiff to pay additional money to correct their error for the Blue Traverse, which he had already purchased.

101. The Defendants' use of the false criminal complaint and false criminal case against the Plaintiff was a malicious abuse and misuse of the criminal complaint and the criminal process because the Defendants knew at all times that the Plaintiff had not committed a crime and that the Defendants had in fact made a unilateral contract mistake.

102. As a proximate result of the Defendants' abuse of process, the Plaintiff has suffered substantial actual damages including, by example only and without limitation, the legal fees, court costs and other expenses of defending the criminal prosecution, as well as other financial loss and non-liquidated damages such as extreme emotional distress, shame, vilification, aggravation, humiliation, loss of enjoyment of life, loss of reputation, sleeplessness, headaches, nightmares, fear of arrest, exposure to public infamy, scandal and disgrace, and other incidental and consequential damages which were reasonably foreseeable by these Defendants. Much of this injury will endure permanently.

103. Punitive damages are also warranted against the Defendants due to their willful, wanton, and malicious conduct in disregard of the Plaintiff's rights.

PRAYER FOR RELIEF

WHEREFORE the Plaintiff prays for judgment in the amount of One Million Dollars (\$1,000,000.00) against the Defendants, jointly and severally, for actual, liquidated, punitive and statutory damages, for equitable and declaratory relief; for attorneys fees and the costs of litigation; for pre-judgment and post-judgment interest; and for such other and further relief as the Court deems just and appropriate.

TRIAL BY JURY IS DEMANDED.

DANNY R. SAWYER

By:  _____
Of Counsel

Rebecca S. Colaw, Esq.
John H. Schroth, Esq.
Rebecca S. Colaw, Attorney at Law, P.C.
2470 Pruden Boulevard
Suffolk, Virginia, 23434
Phone: 757-539-5020
Fax: 757-539-5743
Counsel for Plaintiff

REBECCA S. COLAW

ATTORNEY AT LAW P.C.

2470 Pruden Boulevard
Suffolk, Virginia 23434

LITIGATION:

Telephone: (757) 539-5020

Facsimile: (757) 539-5743

COLLECTIONS:

Telephone: (757) 539-9100

Facsimile: (757) 539-5743

September 21, 2012

VIA HAND DELIVERY

Hon. Faye W. Mitchell, Clerk
Chesapeake Circuit Court
307 Albemarle Drive, Suite 300 A
Chesapeake, Virginia 23322

Re: Danny Sawyer v. Kline Chevrolet, Inc. trading as Priority Chevrolet, et al
Case Number: CL12002177-00

Dear Ms. Mitchell:

Enclosed please find the original and two copies of an Amended Complaint in the above referenced matter. Also enclosed is the cover sheet for filing civil actions. We will be serving the defendants at a later date. Please do not prepare the complaint for service at this time.

Thank you for your assistance in this matter.

With warm regards,


Rebecca S. Colaw

RSC/jmw
Enclosure

FILED IN CLERK'S OFFICE
2012 SEP 21 PM 12:30
FAYE W. MITCHELL, CLERK

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. CL1 2002177-00
(CLERK'S OFFICE USE ONLY)*

Chesapeake Circuit Court

Circuit Court

Danny Sawyer

PLAINTIFF(S)

v./In re:

Kline Chevrolet, Inc. trading as

DEFENDANT(S)

Priority Chevrolet, et al

I, the undersigned ☐ plaintiff ☐ defendant ☐ attorney for ☐ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

- | | | |
|---|--|--|
| <input type="checkbox"/> Accounting | <input type="checkbox"/> Conservator of Peace | <input type="checkbox"/> Law Enforcement/Public Official Petition |
| <input type="checkbox"/> Administrative Appeal | <input type="checkbox"/> Construe Will | <input type="checkbox"/> Mechanics Lien |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Contract Action | <input type="checkbox"/> Medical Malpractice |
| <input type="checkbox"/> Adoption - Foreign | <input type="checkbox"/> Contract Specific Performance | <input type="checkbox"/> Motor Vehicle Tort |
| <input type="checkbox"/> Adult Protection | <input type="checkbox"/> Correct/Erroneous State/Local Taxes | <input type="checkbox"/> Name Change |
| <input type="checkbox"/> Aid and Guidance | <input type="checkbox"/> Counterclaim - Monetary Damages | <input type="checkbox"/> Order to Sever |
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Counterclaim - No Monetary Damages | <input type="checkbox"/> Partition |
| <input type="checkbox"/> Annulment | <input type="checkbox"/> Cross Claim | <input type="checkbox"/> Petition |
| <input type="checkbox"/> Annulment - Counterclaim/Responsive Pleading | <input type="checkbox"/> Custody/Visitation/Support/Equitable Distribution | <input type="checkbox"/> Product Liability |
| <input type="checkbox"/> Appeal Decision of ABC Board | <input type="checkbox"/> Declaratory Judgment | <input type="checkbox"/> Quiet Title |
| <input type="checkbox"/> Appeal Decision of Board of Zoning | <input type="checkbox"/> Declare Death | <input type="checkbox"/> Referendum Elections |
| <input type="checkbox"/> Appeal Decision of Comp Board | <input type="checkbox"/> Delinquent Taxes | <input type="checkbox"/> Reformation of Trust |
| <input type="checkbox"/> Appeal Decision of Employment Commission | <input type="checkbox"/> Detinue | <input type="checkbox"/> Reinstatement of Driving Privileges |
| <input type="checkbox"/> Appeal Decision of Local Government | <input type="checkbox"/> Divorce | <input type="checkbox"/> Reinstatement (General) |
| <input type="checkbox"/> Appeal Decision of Marine Resources Commission | <input type="checkbox"/> Divorce - Counterclaim/Responsive Pleading | <input type="checkbox"/> Removal |
| <input type="checkbox"/> Appeal Decision of Voter Registration | <input type="checkbox"/> Ejectment | <input type="checkbox"/> Separate Maintenance |
| <input type="checkbox"/> Appointment of Church Trustee, Substitute Fiduciaries | <input type="checkbox"/> Encumber/Sell Real Estate | <input type="checkbox"/> Separate Maintenance Counterclaim/Responsive Pleading |
| <input type="checkbox"/> Approval of Right to be Eligible to Vote | <input type="checkbox"/> Enforce Vendor's Lien | <input type="checkbox"/> Standby Guardian/Conservator |
| <input type="checkbox"/> Asbestos Litigation | <input type="checkbox"/> Escheat | <input type="checkbox"/> Termination of Mineral Rights |
| <input type="checkbox"/> Attachment | <input type="checkbox"/> Establish Boundaries | <input type="checkbox"/> Unlawful Detainer |
| <input type="checkbox"/> Bond Forfeiture Appeal | <input type="checkbox"/> Expunge | <input type="checkbox"/> Vehicle Confiscation |
| <input type="checkbox"/> Child Abuse and Neglect - Unfounded Complaint | <input type="checkbox"/> Forfeiture of U.S. Currency | <input type="checkbox"/> Will Contested |
| <input type="checkbox"/> Civil Contempt | <input type="checkbox"/> Freedom of Information | <input type="checkbox"/> Writ of Certiorari |
| <input type="checkbox"/> Claim Impleading Third Party Defendant - Monetary Damages | <input type="checkbox"/> Garnishment | <input type="checkbox"/> Writ of Habeas Corpus |
| <input type="checkbox"/> Claim Impleading Third Party Defendant - No Monetary Damages | <input type="checkbox"/> General Tort Liability (other than motor vehicle) | <input type="checkbox"/> Writ of Mandamus |
| <input checked="" type="checkbox"/> Complaint - (Miscellaneous) | <input type="checkbox"/> Grievance Procedures | <input type="checkbox"/> Writ of Prohibition |
| <input type="checkbox"/> Compromise Settlement | <input type="checkbox"/> Guardian/Conservator Appointment | <input type="checkbox"/> Writ of Quo Warranto |
| <input type="checkbox"/> Condemnation | <input type="checkbox"/> Impress/Declare a Trust | <input type="checkbox"/> Wrongful Death |
| <input type="checkbox"/> Confessed Judgment | <input type="checkbox"/> Injunction | <input type="checkbox"/> Petition for Authorization to Celebrate Rites of Marriage |
| | <input type="checkbox"/> Interdiction | <input type="checkbox"/> Other |
| | <input type="checkbox"/> Interrogatory | |
| | <input type="checkbox"/> Intentional Tort | |
| | <input type="checkbox"/> Judgment Lien-Bill to Enforce | |
| | <input type="checkbox"/> Judicial Review | |
| | <input type="checkbox"/> Landlord/Tenant | |

☒ Damages in the amount of \$ 1,000,000.00

are claimed

September 21, 2012

DATE

☐ PLAINTIFF

☐ DEFENDANT

☒ ATTORNEY FOR ☐ PLAINTIFF

☐ DEFENDANT

Rebecca S. Colaw, Esquire

PRINT NAME

2470 Pruden Boulevard, Suffolk, Virginia 23434 757-539-5020

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

VIRGINIA: IN THE CIRCUIT COURT FOR CITY OF CHESAPEAKE

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Melinda Lloyd

**Serve: 1495 S Military Highway
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AND

Lawsuit # 2

Filed Sept. 24, 2012

Re: Failure to transfer
Title

Bill Fink

**Serve: 1495 S Military Highway
Chesapeake, VA 23320 ·**

AND

Adam Sgroi

**Serve: 1495 S Military Highway
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AND

Brian Louis.

**Serve: 1495 S Military Highway
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Defendants.

COMPLAINT

COMES NOW the Plaintiff, Danny R. Sawyer (hereafter the "Plaintiff"), by counsel, and as and for his Complaint against the Defendants, he alleges as follows:

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1. The Plaintiff is an adult resident of Chesapeake, Virginia.
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FACTS

10. On or about May 8, 2012, the Plaintiff presented to Priority Chevrolet around 10:30 a.m. to purchase a new car.

11. The Plaintiff negotiated the price with agents of a Blue Chevrolet Traverse VIN: 1GNKRJED9CJ139128 (hereinafter "the Blue Traverse") that he purchased.

12. At the time of purchase of the blue Traverse, the Plaintiff traded in a 2008 Saturn Vue, VIN: 3GSCL53718S681028 (hereinafter "the Saturn Vue") to the Defendants. Upon trading in the Saturn Vue, the Plaintiff endorsed the assignment and warranty of title on the certificate of title of the Saturn Vue and delivered the endorsed certificate of title of the Saturn Vue to the Defendants. The Defendants agreed to forward the certificate of title of the Saturn Vue to the Virginia Department of Motor Vehicles and to register the Saturn Vue with the Virginia Department of Motor Vehicles.

13. The Plaintiff's salesman on the sale of the Blue Traverse was Brian Louis.

14. The sales manager on the sale of the Blue Traverse was Wib Davenport.

15. The finance manager on the sale of the Blue Traverse was Melinda Lloyd.

16. Brian Louis and or other agents prepared the paperwork for the purchase of the Blue Traverse and told the Plaintiff's all paperwork ready for the new purchase of the Blue Traverse.

17. The dealership and the plaintiff did not negotiate on the purchase price of the Blue Traverse and the dealership and its agents drafted the documents for the purchase of the Blue Traverse without any discussion with the Plaintiff.

18. Approximately 20 minutes later, Brian Louis returned and told the Plaintiff that he had another customer on the lot but that "Melinda Lloyd has all the paperwork and she will get you to sign all the paperwork in the finance manager's office."

19. At approximately 4:00 p.m., the Plaintiff walked into Melinda Lloyd's office, reviewed the sales contract for the purchase of the Blue Traverse, including the purchase price of \$33,957.55, agreed to the terms of the new contract, including the purchase price of \$33,957.55, and signed the new contract as well as a power of attorney form in which the Plaintiff authorized the dealership to register and title the Blue Traverse with the Virginia Department of Motor Vehicles in the name of the Plaintiff and remove the Saturn Vue from the Plaintiff's name.

20. Immediately after he signed the contract for the purchase of the Blue Traverse, the Plaintiff left Melinda Lloyd's office to acquire insurance on the Blue Traverse as well as a

cashier's check for the remaining balance on the contract of \$16,500.46.

21. After he left Melinda Lloyd's office, the Plaintiff obtained the cashier's check for \$16,500.46 and also had his insurance company, Nationwide Insurance, add coverage for the Blue Traverse to his existing automobile insurance policy and drop coverage for the Saturn Vue from his existing automobile insurance policy.

22. Approximately 45 minutes later, the Plaintiff returned to the dealership with a cashier's check for \$16,500.46 in hand and presented it to Melinda Lloyd who accepted it.

23. Melinda Lloyd proceeded to escort the Plaintiff to the new showroom receptionist where he was presented with a receipt for the cashier's check in payment of the balance remaining on the purchase of the Blue Traverse.

24. The first initial receipt which the receptionist provided to the Plaintiff had not been entered correctly and stated that only \$1,600.46 had been received. The Plaintiff notified the receptionist of the mistake who then apologized and took back the initial receipt and then gave the Plaintiff an updated receipt for the correct amount of \$16,500.46.

25. Before leaving the showroom on May 8, 2012, the Plaintiff was approached by Wib Davenport, who thanked the Plaintiff for the purchase of the Blue Traverse.

26. The Saturn Vue was serviced by the dealership, certified as a certified used car and placed out for sale on the lot through advertisements.

27. Wib Davenport also asked the Plaintiff to please give them great customer satisfaction scores on the survey the Plaintiff would be receiving and if there was anything the Plaintiff wasn't satisfied with to bring it to his attention.

28. At approximately 5:00 p.m., the Plaintiff left the dealership in the newly purchased Blue Traverse, which he then drove home.

29. On or about May 10, 2012, the dealership cashed the Plaintiff's cashier's check for \$16,500.46.

30. The Blue Traverse remains in the Plaintiff's possession and the Plaintiff is the true and lawful owner of the Blue Traverse.

31. On August 16, 2012, the Plaintiff received a letter from the Virginia Department of Motor Vehicles that Nationwide Insurance had notified the Virginia Department of Motor Vehicles that he had dropped coverage for the Saturn Vue. In the letter, the Virginia Department of Motor Vehicles further informed the Plaintiff that he had until September 5, 2012 to prove that the Saturn Vue had been sold or reinsured or to accept and pay the uninsured motorist fee.

32. On September 4, 2012, the Plaintiff went to the Chesapeake Customer Service Center of the Virginia Department of Motor Vehicles, where he spent approximately 2 hours in an attempt to rectify the matter. An employee at the Chesapeake Customer Service Center told the Plaintiff that the VIN number for the Blue Traverse had never been titled and that the license plates were still registered to the Saturn Vue. The Plaintiff showed the DMV employee the registration which the Defendants had given him at the time of his purchase of the Blue Traverse in order to prove to the DMV employee that he had traded in the Saturn Vue to the Defendants and that the Defendants had transferred his plates from the Saturn Vue to the Blue Traverse. Ultimately, the DMV employee instructed the Plaintiff that he needed to provide the buyers guide, which showed the purchase of the Blue Traverse and the trading in of the Saturn Vue.

33. On September 5, 2012, the Plaintiff went to the Norfolk/Military Circle Customer Service Center of the Virginia Department of Motor Vehicles, where he spent over 3 hours in another attempt to rectify the matter. The Plaintiff presented the requested paperwork to Pat Hannas, a DMV manager. Ms. Hannas told the Plaintiff that she was unable to clear up the matter because she had spoken to the Defendants and the Defendants refused to confirm that the Plaintiff had purchased the Blue Traverse and traded in the Saturn Vue. Ms. Hannas further told the Plaintiff that the Defendants had told Ms. Hannas to instruct the Plaintiff to go to the dealership if he wanted to resolve the situation. Ms. Hannas also told the Plaintiff that since the Defendants had failed to register the Blue Traverse within 30 days, the Virginia Department of Motor Vehicles would conduct an internal investigation and inform the Plaintiff of the status of his driving privileges after the completion of the internal investigation.

34. As of the date of the filing of this Complaint, the Defendants have finally confirmed to the Virginia Department of Motor Vehicles that the Defendants have accepted the Saturn Vue from the Plaintiff as a trade in, but the Defendants have still not registered or titled the Blue Traverse with the Virginia Department of Motor Vehicles in the name of the Plaintiff.

35. The Plaintiff is unable to drive the Blue Traverse and had to purchase a different automobile.

COUNT ONE: FAILURE TO TRANSFER CERTIFICATE OF TITLE

36. The Plaintiff reiterates and incorporates paragraphs 1 – 35 above as if fully set out herein.

37. On May 8, 2012, the Plaintiff traded in the Saturn Vue to the Defendants, endorsed the assignment and warranty of title on the certificate of title of the Saturn Vue and delivered the endorsed certificate of title of the Saturn Vue to the Defendants.

38. Pursuant to Virginia Code Section 46.2-630, the Defendants had a duty to forward the certificate of title of the Saturn Vue to the Virginia Department of Motor Vehicles and to register the Saturn Vue with the Virginia Department of Motor Vehicles within 30 days.

39. On May 8, 2012, the Plaintiff purchased the Blue Traverse from the Defendants and the Defendants delivered the Blue Traverse to the Plaintiff. Pursuant to Virginia Code Section 46.2-628, the Defendants had a duty to endorse the assignment and warranty of title on the certificate of title of the Blue Traverse and to deliver the endorsed certificate of title of the Blue Traverse to the Plaintiff on May 8, 2012.

40. The Defendants failed to forward the certificate of title of the Saturn Vue to the Virginia Department of Motor Vehicles and to register the Saturn Vue with the Virginia

Department of Motor Vehicles within 30 days in violation of Virginia Code Section 46.2-630. The Defendants' violation of Virginia Code Section 46.2-630 constitutes negligence per se.

41. The defendants failed to endorse the assignment and warranty of title on the certificate of title of the Blue Traverse and deliver the endorsed certificate of title of the Blue Traverse to the Plaintiff on May 8, 2012 in violation of Virginia Code Section 46.2-628. The Defendants' violation of Virginia Code Section 46.2-630 constitutes negligence per se.

42. As a direct and proximate result of the Defendants' negligence per se as described above, the Plaintiff has suffered substantial actual damages in that he cannot legally drive the Blue Traverse.

43. As a result the Plaintiff had suffered substantial actual damages, including but not limited to, the loss of use of the Blue Traverse, the loss of his time, lost wages and other emotional and mental anguish all of which were direct or incidental and consequential damages that were reasonably foreseeable by the Defendants.

COUNT TWO: NEGLIGENCE

44. The Plaintiff reiterates and incorporates paragraphs 1 – 43 above as if fully set out herein.

45. On May 8, 2012, the Plaintiff traded in the Saturn Vue to the Defendants, endorsed the assignment and warranty of title on the certificate of title of the Saturn Vue and delivered the endorsed certificate of title of the Saturn Vue to the Defendants. By voluntarily undertaking to accept the trade in of the Saturn Vue from the Plaintiff, the Defendants assumed the duty to forward the certificate of title of the Saturn Vue to the Virginia Department of Motor Vehicles and to register the Saturn Vue with the Virginia Department of Motor Vehicles and also had a

duty to use ordinary care, which included performing the above described duties within a reasonable period of time.

46. On May 8, 2012, the Plaintiff purchased the Blue Traverse from the Defendants. By voluntarily undertaking to sell the Blue Traverse to the Plaintiff, the Defendants assumed the duty to endorse the assignment and warranty of title on the certificate of title of the Blue Traverse and to deliver the endorsed certificate of title of the Blue Traverse to the Plaintiff and also had a duty to use ordinary care.

47. The Defendants breached the above described duties they owed to the Plaintiff by failing to forward the certificate of title of the Saturn Vue to the Virginia Department of Motor Vehicles within a reasonable period of time and to register the Saturn Vue with the Virginia Department of Motor Vehicles within a reasonable period of time.

48. The Defendants breached the above described duties they owed to the Plaintiff by failing to endorse the assignment and warranty of title on the certificate of title of the Blue Traverse and deliver the endorsed certificate of title of the Blue Traverse to the Plaintiff.

49. As a direct and proximate result of the Defendants' above described negligence, the Plaintiff has suffered substantial actual damages in that he cannot legally drive the Blue Traverse

50. As a result the Plaintiff had suffered substantial actual damages, including but not limited to, the loss of use of the Blue Traverse, the loss of his time, lost wages and other emotional and mental anguish all of which were direct or incidental and consequential damages that were reasonably foreseeable by the Defendants.

COUNT THREE: BREACH OF FIDUCIARY DUTY

51. The Plaintiff reiterates and incorporates paragraphs 1 – 50 above as if fully set out herein.

52. On May 8, 2012, as part of the purchase of the Blue Traverse, the Plaintiff executed a power of attorney form by which the Defendants voluntarily accepted the appointment from the Plaintiff to act as the Plaintiff's Attorney-in-Fact to perform the registration of the Blue Traverse with the Virginia Department of Motor Vehicles in the name of the Plaintiff.

53. Defendants having accepted and voluntarily undertaken a fiduciary duty to register the Blue Traverse with the Virginia Department of Motor Vehicles in the name of the Plaintiff had a fiduciary duty to the Plaintiff.

54. The Defendants have breached the fiduciary duty they owed to the Plaintiff by failing to register the Blue Traverse with the Virginia Department of Motor Vehicles in the name of the Plaintiff.

55. As a direct and proximate result of the Defendants' breach of fiduciary duty as described above, the Plaintiff has suffered substantial actual damages in that he cannot legally drive the Blue Traverse.

56. As a result the Plaintiff had suffered substantial actual damages, including but not limited to, the loss of use of the Blue Traverse, the loss of his time, lost wages and other emotional and mental anguish all of which were direct or incidental and consequential damages that were reasonably foreseeable by the Defendants.

57. The breach by the Defendants were deliberate and willful acts calculated to generate profits for their business through the sale of the Blue Traverse and as the Defendants are liable for

punitive damages.

COUNT FOUR: VIOLATION OF THE
VIRGINIA CONSUMER PROTECTION ACT

58. The Plaintiff reiterates and incorporates paragraphs 1 – 57 above as if fully set out herein.

59. The purchase of the Blue Traverse by the Plaintiff was a “consumer transaction” as defined in § 59.1-198 of the Code of Virginia.

60. The Blue Traverse constitutes “goods” as defined in § 59.1-198 of the Code of Virginia.

61. The Defendants are a “supplier” as defined in § 59.1-198 of the Code of Virginia.

62. The Plaintiff is a “person” as defined in § 59.1-198 of the Code of Virginia.

63. The Consumer Protection Act (VCPA) § 59.1-200 of the Code of Virginia makes certain fraudulent acts unlawful if committed by a supplier. Included in the list of prohibited acts is “Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.”

64. The Defendants violated the VCPA § 59.1-200(A)(14) of the Code of Virginia when the Defendants represented to the Plaintiff that they would register and title the Blue Traverse with the Virginia Department of Motor Vehicles in the name of the Plaintiff; transfer the Tags from the Saturn Vue to the Blue Traverse, and notify the Virginia Department of Motor Vehicles that they were now the owners of the Saturn Vue.

65. In making the above described misrepresentation, the statements and actions of the Defendants were fraudulent and misrepresented to the Plaintiff the actual actions and intentions of the Defendants.

66. In each instance the Defendants intended that the Plaintiff rely on the above described misrepresentations and omissions.

67. In making the above described misrepresentation, the Defendants intended that the Plaintiff rely on the above described misrepresentations and omissions.

68. The Plaintiff did in fact rely on the statements and representations of the Defendants in his decision to purchase the Blue Traverse from the dealership.

69. The actions of the Defendants induced the Plaintiff to purchase the Blue Traverse from the Defendants.

70. As a direct and proximate result of the VCPA violations against him, the Plaintiff suffered substantial actual damages, including but not limited to, the loss of the value of the Blue Traverse and the loss of the use of the Blue Traverse in that he cannot legally drive the Blue Traverse, the loss of his time in dealing with the Virginia Department of Motor Vehicles, emotional and mental anguish all of which were direct or incidental and consequential damages that were reasonably foreseeable by the Defendants.

71. The misrepresentations of the Defendants were deliberate and willful acts calculated to generate profits for their business through the sale of the Blue Traverse.

72. As such the Defendants are liable for punitive damages to include treble damages and attorney's fees.

COUNT FIVE: FRAUD

73. The Plaintiff reiterates and incorporates paragraphs 1 – 72 above as if fully set out herein.

74. The representations made to the Plaintiff regarding the registering and titling the Blue Traverse with the Virginia Department of Motor Vehicles in the name of the Plaintiff were

false when made.

75. The representations made to the plaintiff that the Defendants would transfer the Tags from the Saturn Vue to the Blue Traverse were false when made.

76. The representations made to the plaintiff that the Defendants would notify the Virginia Department of Motor Vehicles that they were now the owners of the Saturn Vue were false when made.

77. The frauds were knowingly and intentionally made with willful and/or reckless disregard for the rights and interests of the Plaintiff and constitute actual and/or constructive fraud and/or misrepresentation by the Defendants against the Plaintiff.

78. The Defendants' fraudulent statements and misrepresentations induced the Plaintiff to purchase the Blue Traverse from the Defendants. Had the Plaintiff known that the Defendants would refuse to register and title the Blue Traverse with the Virginia Department of Motor Vehicles, , not transfer his tags, nor notify the Virginia Department of Vehicles that they were now the owners of the Saturn Vue, he would not have purchased the Blue Traverse from the Defendants or traded in his Saturn Vue.

79. As a direct and proximate result of the Defendants' fraudulent statements and misrepresentations, the Plaintiff was denied the use and value of the Blue Traverse and his Tags.

80. The actions of the Defendants and its agents in constructing this transaction demonstrated a total disregard for the rights of the Plaintiff and the law and warrant an award of punitive damages and attorney fees..

PRAYER FOR RELIEF

WHEREFORE the Plaintiff prays for judgment against the Defendants, jointly and severally, for damages

- a. As to Count One: compensatory damages in the amount of \$100,000.00;
- b. As to Count Two: compensatory damages in the amount of \$100,000.00;
- c. As to Count Three: compensatory damages in the amount of \$100,000.00 and punitive damages in the amount of \$350,000.00.
- d. As to Count Four: compensatory damages in the amount of \$100,000.00, plus treble damages and attorney fees based on the Defendants' deliberate and willful violation of the Virginia Consumer Protection Act pursuant to Va. Code §59.1-200 et seq.;
- e. As to Count Five: Compensatory damages in the amount of \$100,000.00 plus punitive in the amount of \$350,000.00
- f. for equitable and declaratory relief; for reasonable attorneys fees and the costs of litigation pursuant to Va. Code §59.1-204(B); attorney fees, for pre-judgment and post-judgment interest from May 8, 2012; and for such other and further relief as the Court deems just and appropriate.

TRIAL BY JURY IS DEMANDED.

DANNY R. SAWYER

By: _____
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